THE LOCAL COURTS'

AND

MUNICIPAL GAZETTE.

VOLUME VIII.

FROM JANUARY TO DECEMBER, 1872.

TORONTO:
COPP, CLARK & CO., PRINTERS, 67 & 69 COLBORNE STREET.
1872.

PRINTED AT THE STEAM PRESS ESTABLISHMENT OF COPP, CLARK & CO.,
67 & 69 COLBORNE STREET, TORONTO.

TABLE

OF THE

CASES REPORTED IN THIS VOLUME.

DIARY FOR JANUARY.

1. Mon.. *Circumcision.* County Court Term beg. Heir and Devisee Sittings begin. Master and Registrar in Chancery and Clerks, and Deputy Clerks of Crown to make returns. Taxes to be computed from this date. Municipal Elections.
6. Sat... *Epiphany.* Christmas vacation in Chancery ends. County Court Term ends.
7. SUN . *1st Sunday after Epiphany.*
8. Mon.. Election of Police Trustees in Police Villages. County York Assizes begin.
10. Wed.. Master and Registrar in Chancery to pay over fees to the Provincial Treasurer.
12. Fri... Court of Error and Appeal Sittings.
13. Sat... Treasurers and Chamberlains of Municipalities to make returns to Board of Audit.
14. SUN.. *2nd Sunday aftr Epiphany.*
15. Mon.. Municipal Councils (ex-Councils) and Trustees of Police Village to hold first meeting.
16. Tues.. Heir and Devisee Sittings end.
20. Sat.... Articles, &c., to be left with Secretary of Law Society.
21. SUN.. *3rd Sunday after Epiphany.*
23. Tues.. First meeting of County Council.
28. SUN.. *Septuagesima Sunday.*
30. Tues.. Last day Non-Residents to give list of their lands.
31. Wed.. Last day for City and County Clerk to make yearly returns to the Provincial Secretary. Last day for Councils to return debts, &c.

The Local Courts'
AND
MUNICIPAL GAZETTE.

JANUARY, 1872.

In a recent case in England (*Reg.* v. *Taylor & Smith*) the evidence shewed that the two prisoners, with another boy, were seen by a policeman to sit together on some door-steps near a crowd, and when a well-dressed person came up to see what was going on, one of the prisoners made a sign to the others, and two of them got up and followed the person into the crowd. One of them was seen to lift the tail of the coat of a man, as if to ascertain if there was anything in the pocket, but making no visible attempt to pick the pocket, and to place a hand against the dress of a woman but no actual attempt to insert the hand into the pocket was observed. Then they returned to the door-step and resumed their seats. They repeated this two or three times. There was no proof of any preconcert, other than this proceeding.

The prisoners were indicted for conspiring to commit larceny, and for an attempt to commit larceny. But the court held they could not be convicted of either on this evidence.

Doubtless the juveniles were much surprised at escaping so easily.

The last *Ontario Gazette* states that a commission has issued to the Judges of the Superior Courts of Law and Equity, under 34 Victoria, capter 7 (Ontario), to report to the Legislative Assembly in respect of any Bills, or petitions for Estate Bills, which may be submitted to the House. We trust that this wholesome provision of the Legislature may have the effect of stopping such measures as the Goodhue Bill and other like matters. It is a pity this provision did not come into force before legislation, so discreditable in principle had taken place. There is still some hope that it may be disallowed by the Governor-General. We should be sorry to see the act ventilated on an appeal to England from our Court of Appeal, if the judgment there should sustain that of the Court of Chancery.

Skilled witnesses are generally great bores. It has been observed that medical men, as a rule, are peculiarly grandiloquent, abounding in resonant technicalitics and scientific monstrosities when placed in the witness-box. We notice that an able medical witness, in an English assize court, lately furnished the opposite counsel with the burden of a telling speech, by informing him that his client's "muscular contractibility responded readily to the electro-galvanic influence."

La Revue Critique de Legislation et de Jurisprudence du Canada.—This review has been highly commended by legal writers in England, as being a very creditable production, in which the subjects are well chosen, and the articles carefully written. In judicial language, we "concur."

By Imperial statute 34–35 Vic. cap. 112, children under fourteen, and without proper guardianship, may, under certain circumstances, be sent by the court to an industrial school. We understand some such, or rather a more extended act is to be applied for during the next session of the Ontario Parliament, in connection with the Boys' and Girls' Home. It is becoming impossible properly to deal with vagrant children, so as to cause them to grow up with a prospect of leading useful lives. A compulsory power of detention in charitable institutions seems to be wanted.

An English statute, which came into force last November, provides for criminals being photographed in prison, and for the distribu-

tion of such photographs, with a view to facilitate identification, and thereby prevent crime.

The English *Law Journal*, referring to the late case of *Johnson* v. *Emerson & Sparrow*, 40 L. J. N. S. Exch. 201, says: "We believe no case will be found in the books, occupying greater space." The length is occasioned by the elaborate judgments upon the question whether or not the defendants were guilty of maliciously procuring the plaintiff to be adjudicated a bankrupt. The court was equally divided. One judgment was withdrawn, and the case goes to the Exchequer Chamber. As to the mere length of the report, we think the *Law Journal* will find that it is surpassed by the Admiralty case of *Banda and Kirwee Booty*, L. R. 1 A. & E. 109. The Exchequer case is reported in L. R. 6 Exch. p. 329, and there occupies 74 pages: the Admiralty case was argued by 37 counsel, representing different interests, and fills 160 pages. True, it may be said of this latter case that it is really a consolidation of several cases.

We observe that the Supreme Court of Pennsylvania has suspended an attorney rejoicing in the name "J. Charles Dickens," by reason of his attempting to intoxicate his opponent, in order to take an advantage of him, "until the offence should be thoroughly purged." The unprofessional singularity of the misconduct, and the mysterious duration of the term of punishment, are alike provocative of profound amazement.

FEES TO LAWYERS IN DIVISION COURTS.

A correspondent recently asked our opinion as the propriety of a small fee being allowed for professional services, as part of the costs of a successful litigant in Division Courts; such fee to be in proportion to the amount in dispute, or the difficulty of the case.

The arguments and reasons given in the letter alluded to are, as we think, insufficient and beside the question. But though he has not put his case as forcibly as he might have done, we are aware that there is a growing desire to have the assistance of lawyers in these Courts; and it is so on the tenable ground that with competent professional men, who understand and are disposed to do their duty, there may be a saving of time, and consequently of expense. When speaking, however, of the saving of time, we allude as well to the preparation of the case before trial as to the mode of conducting it at the trial. If a competent lawyer were consulted, before the case was entered or defence put in, as to the form of the claim or defence, and the evidence necessary to support it, there would be no reason, as a general rule, for those frequent adjournments which are now necessary to prevent injustice, and which take up so much time, and would enable the case to be disposed of on its merits in the first instance

Again, in calling and examining witnesses, much time may be saved by confining them to the very points in issue, and bringing the court at once face to face with the real question in dispute between the parties.

The policy of the Division Court system, however, has hitherto been against any fees being allowed to professional men in Division Court cases; the intention being, we presume, that the costs should be kept at the lowest point consistent with the due administration of justice. Nor must it be lost sight of that these Courts are intended for the dispatch of business in a summary way, and to allow to practitioners in the Division Courts the same latitude that they have in the Superior Courts, would be to impair their value as cheap tribunals to poor suitors for small amounts.

As matters are now arranged, the whole business of each Court is generally concluded in a single day. With lengthy examinations of witnesses, and addresses from lawyers, three or four cases might occupy a whole day, and protract the sittings for three or four days, to the great injury and annoyance of suitors. In any point of view much would depend on practitioners, whether the Court was assisted or not, or whether business was delayed or not, themselves become a nuisance or the reverse.

The employment of counsel in every case is not at all likely to become the custom, and in simple cases would not be beneficial. Professional aid should be encouraged in difficult or complicated cases, and a fee to counsel taxed at the time, within a certain limit, having reference to the nature of the case, and with power to disallow a fee in cases where such a course would seem to the judge just and proper.

It would be a great improvement if the judge had power, in any case of sufficient im-

portance, to transfer it at once to the County Court, for more deliberate examination and adjudication. We see there is bill before the legislature pointing in this direction; but if it is altered as proposed, to allow *non*-professional men to act as advocates, its effect will be vicious in the extreme. Neither the parties nor courts could have any effectual protection with such a class of men, nor would there be any proper control over them. To legalise their employment would be a very dangerous act, and we do not think that the Attorney-General, who will of course pass on such proposed legislation, would lend his sanction to it, or permit such a measure to become law.

SELECTIONS.

BUSINESS IN THE COUNTY COURTS.

The business done in the County Courts for the year 1870 still exhibits the stupendous proportions in number and value of causes which mark every 'undertaking' supported by the masses. When we compare the Superior Courts of Common Law and the County Courts we may imagine ourselves to be studying the traffic returns of a great railway. The plaints overtop the writs of summons just as the third class rises above the first class. In 1870 there were 912,298 plaints in the County Courts, and but 72,660 summonses issued in the Superior Courts. The fees in the County Courts amounted to £352,845, the fees in the Superior Courts to £52,593. More than half a million causes were tried and determined in the County Courts, while only about 3,400 causes were entered for trial before juries in the Superior Courts. When we add that in the Superior Courts there is a falling off of at least ten per cent. in general business, as compared with the year 1869, while in the County Courts things were 'not worse' we fear that we have completed a sad picture for contemplation of the profession. Although the number of plaints issued in the County Courts was somewhat less than in the previous year, yet it is obvious that business is as good as ever, because the amounts for which plaints were entered, and the amount sfor which judgments were awarded, amounts of costs and of fees, are not less than the corresponding amounts in the previous year. We are almost staggered by such figures as £2,644,762, as representing the amounts for which plaints were entered. We are very sorry to see that after the boasted abolition of imprisonment for debt, 26,337 warrants of commitment were issued, and 6,597 debtors were actually sent to prison. Although these figures are not quite so ugly as those for the year 1869, they are very much worse than the figures for 1860.

We need hardly say that this gigantic mass of business was not disposed of without considerable labour on the part of the judges and officers of the Courts. The whole numbers of days upon which the Courts sat throughout England and Wales in the year was 8,085, and their Honours got through an average of 64 causes per diem. On Circuit No. 6, the Court, consisting of two judges, sat for 322 days; but a single judge on Circuit 33 sat for 182 days. With his lot we may contrast favourably for the judge the 89 days of circuit of No. 5. On this last circuit his Honour disposed of causes at the speedy rate of 160 per diem.

The plaintiff in the County Court always wins; at least he wins ninety-six times in every hundred, and what is more remarkable, he gets on the average fifty per cent. of the amount of his demand. These two statistical facts pretty well demonstrate that County Courts are generally employed in the task of debt-collecting, and from them we deduce proof of an enormous system of credit existing among the humbler classes.

The equitable jurisdiction of the County Courts needs but little comment. Its insignificant extent may be judged from the single fact that the total number of equitable proceedings of every sort and kind fell short of 2,000 in the year.—*The Law Journal.*

SIR EARDLEY WILMOT.

The retirement of Sir John Eardley Wilmot from the judgeship of the Marylebone County Court is an event that calls for comment. No judge was ever more respected, or ever better deserved the respect of the profession of the public. His ability and learning were conspicuous, and he was distinguished for the zealous dischage of his onerous duties. He retires because he is unable to attend to the business of Circuit 43, and the work that overtaxes the strength of Sir Eardley must surely try the powers and endurance of his learned successor.

The Marylebone district comprises a population of upwards of a quarter of a million.

Sir Eardley, supported by memorials from the inhabitants, petitioned for a division of the Court, but the petition was disregarded; we suppose on the score of economy. Then he obtained the assistance of Mr. Abbott as deputy judge for one day in the week, but that course was not approved of; and, as Sir Eardley would not do injustice to the suitors by attempting to do more than his strength permitted, he resigned. We protest against the costly economy of the Government, but there is consolation in the case of Sir Eardley Wilmot. He is lost to the country as a County Court judge, but we apprehend that he will be of greater service as a law reformer, for which his talent, his learning, and his ripe judicial experience peculiarly fit him. His farewell address to the Court shows that he has well considered the subject. He proposes that the plaintiff should in any case have the option of of bringing his action in a County Court, and that when the case involved debt and dama-

ges above a certain amount, the defendant should have the power to remove to a Superior Court on giving security for costs. To this proposal we strongly object. When the case is of a certain importance the defendant has a right to a trial before a judge of a Superior Court, and to have a verdict of a superior jury.

Because a man is poor, that is no reason why he should put up with a trial in a County Court. Those who go to law must take the risk of the costs being paid in the event of success. Besides, if a man is too poor to pay costs, what is the use of suing him for a large debt or for heavy damages? The next suggestion we hold to be worthy of serious consideration. Sir Eardley proposes that civil and criminal business should be associated in the local Courts, the criminal business being such as is now dealt with by quarter sessions.

We regard it as most important that there should be no delay in the disposal of criminal business. Nothing is so deterrent as swift justice, and the wrongfully accused are entitled to a speedy trial. The next recommendation refers to the of the business in County Courts. Sir Eardley proposes that there shall be fixed days for the actions under £5, and cases above that amount and jury cases to be taken on other days. He remarks that with the present system counsel who attend County Courts frequently have to wait for hours and and then go away unheard. The cases in County Courts are now so important that the aid of counsal is indispensable, and it is monstrous that their time should be wasted whilst the Court is engaged in disposing of a long list of petty actions. Sir Eardley is of opinion that it would be advantageous to occasionally promote a County Court judge to a judgeship at Westminster Hall. Better men, he contends, would accept County Court judgeships if they knew that step was not a bar to further advancement. With this we agree, and for two reasons:—1. We require first-rate men for the County Courts, as in some respects their position is more difficult than that of a puisne judge. In a Superior Court the judge usually has the assistance of counsel, while in the County Court the judge has generally to do without that assistance. 2. If first-rate men took County Court judgeships, they would be well qualified for Westminster Hall. We do not mean, of course, that all the judges should be taken from the County Courts, and to carry out the plan there must be a system of promotion in County Court judgeships—*id est*, meritorious judges should be transferred from less to more important circuits. Sir Eardley says that he left Bristol for the London Court that he might not be debarred taking his small share in legal improvements. We hope, and indeed we are confident, that his retirement from the office of judge will enable him to render greater service in the much needed work of legal reform. —*The Law Journal.*

CARRIERS.

PASSENGERS' LUGGAGE.

Macrow v. *G. W. R. Co.*, Q.B, 19 W. R. 873.

The plaintiff, returning with his household from Canada to England, had among his luggage various articles of bedding, with which he intended to provide his new settlement, wherever it might be. The defendant, by whose line he travelled, lost his goods, and then he sued them for damages; and having on the trial recovered damages, from the calculation of which the bedding was (among other things) excluded, he obtained a rule to increase the damages by the value of the excluding articles.

After hearing the rule argued the Court took time to consider, and at length delivered a judgment in which an attempt is made to settle some general rule by which to determine what is "passengers' luggage." "Whatever," says Cockburn, C.J., delivering the judgment of the Court, "the passenger takes with him for his personal ease or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or to the *ultimate purpose* of the journey, must be considered as personal luggage." Apparel for use or ornament, the sportmans's gun and fishing-rod, the artist's easel, and the student's book are mentioned as instances," and other articles of an analogous character, the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journeying." "On the other hand, the term *ordinary luggage*, being thus confined to that which is personal to the passenger and carried for his use or convenience, it follows that what is carried for the purpose of business, such as merchandise or the like, or for larger or *ulterior purposes*, such as articles of furniture or household goods, would not come within the description of ordinary luggage, unless accepted as such by the carrier." It is to be feared that notwithstanding this careful attempt at discrimination the question is not much nearer a settlement than it was before, and the case cannot be safely cited to prove anything except that bedding is not ordinary passengers's luggage. When the term is allowed to include what the passenger carries for *ultimate* purposes, but not what he carries for *ulterior* purposes, inasmuch as the superlative is larger than the comparative, it must be assumed that ultimate and ulterior are used with a different reference, and that by the latter term is signified something beyond any purpose, even an ultimate purpose, of the journey. But the ultimate purpose of the journey is something to be done after the journey is accomplished, and is thus distinguished from the necessities of the journey itself, and this is shown by the instances put; in fact, almost everything a passenger ever carries is carried for such purposes. But where these ultimate purposes end, and the purposes which are ulterior to them, and are therefore not purposes of the journey at all, begin, is far from clear.

The distinction might be drawn between a permanent settlement at the journey's end and a mere temporary sojourn, but this is not expressed in the judgment, although it would apparently suit the facts of the case. That distinction would not, however, apply to merchandise carried for sale, for there the sojourn is only intended to be temporary. It would be open also to this objection—that a passenger might recover for a loss, on his journey out, of that in respect of which he could not recover on his journey home; or if things originally taken out were held to retain their character on their way back, this would not apply to anything newly acquired and on the road to its destination. If, again, the test of *personal* use is applied, it is hard to say that a man does not as much personally use his bed as any article of clothing. And if it is said that the things must be such as people ordinarily carry, it was answered in this case that emigrants ordinarily do carry their bedding, and emigrants are just as much a class as artists or sportsmen. It is not therefore easy to see that this case has really contributed to the solution of the vexed question, What is passengers' luggage? and we cannot help entertaining a doubt whether the case was rightly decided, whether the true application of the test personal use would not have given the plaintiff his damages, and whether the test of ulterior and ultimate purposes was not an entirely false and impossible ground of distinctonn. It may at first sight appear that the qualification, "the taking of which has arisen from the fact of his journeying," gives some assistance; but on examination the test will be found to fail, for if it means anything to the purpose it must mean that the traveller takes the things for the sake of the journey, and does not take the journey for the sake of the things. But though this would exclude merchandise carried for sale, it would equally exclude many other things which are certainly included in passengers' luggage and most of the things mentioned as such in the judgment; indeed, it would exclude everything not required by the fact of moving about from place to place. If, on the other hand, it only means that the journey must form the occasion or create the necessity of taking them, then certainly the plaintiff's goods would have fallen within the description, would in fact be as wide as any passenger could desire.—*The Solicitors' Journal.*

FREIGHT IN ADVANCE.

We may be inclined in our hearts to sneer at the law of the Medes and Persians, "which altereth not," but we must remember that there is no evidence whatever that the judges of the Medes and Persians thought the particular law bad and deserving of amendment.

Our Courts go far beyond these immutable orientals. What can we say, when arraigned by the "intelligent foreign jurist," in defence of the Court of Exchequer Chamber in the case of *Bryne* v. *Schiller*, which has already called forth comment and rebuke, but which becomes more acutely aggravating when we sit down calmly to read the report of it in the current number of our Reports(40 Law J.Rep. (N.S.) Exch. 177). "Held," says the headnote, "that a payment in advance on account of freight cannot be recovered, even though the voyage fail." "That," says the Lord Chief Justice, "is settled by the authorities."

It is exactly contrary to the law of all other European nations; and even across the Atlantic, where people make up for contempt of all things old by excessive veneration of the common law, the Courts have discarded our rule, and have decided that a payment of freight in advance must be repaid if not earned. The Lord Chief Justice regrets our rule, thinking it founded upon an erroneous principle, and anything but satisfactory. Mr. Justice Byles says that the current of authority is too strong even for the House of Lords to resist. Mr. Justice Keating says that it is unfortunate that we should be left out in the cold, but there is the law, and it ought not to be shaken; and Mr. Justice Lush winds up the argument by declaring that it is highly important that a rule of commericial law, established so long as the one in question, should be adhered to. After all we are only dealing with the foreign tribunals as the immortal recruit did with his brethren in the militia:—"Bill," said the squad," you are out of step." "Well," replied Bill," then change yours."—*The Law Journal.*

MAGISTRATES, MUNICIPAL, INSOLVENCY & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

ASSAULT—SECOND INFORMATION—MANDAMUS.

The applicant, C., having appeared to an information charging him with an assault, and praying that the case might be disposed of summarily under the statute, H., the complainant, applied to amend the information by adding the words "falsely imprison." This being refused, H. offered no evidence, and a second information was at once laid, including the charge of false imprisonment. The magistrate refused to give a certificate of dismissal of the first charge, or to proceed further thereon, but indorsed on the information, "Case withdrawn by permission of the court, with the view of having a new information laid."

Held, that the complainant could not, even with the magistrate's consent, withdraw the charge, the defendant being entitled to have it disposed of.

Held, also that an information may be amended, but if on oath it must be resworn; and that the amendment might have been made here.

Semble, that the more correct course would have been to go on the original case, and, under 32-33 Vic. ch. 20, to refrain from adjudicating.

A *mandamus* to hear and determine the first charge, and, if dismissed, to grant a certificate of dismissal was however refused, for the withdrawal was equivalent to a dismissal; and the magistrate might under sec. 46, refrain from adjudicating, and if it were dismissed without a hearing on the merits, there would be no certificate.—*In re Conklin*, 31 U. C. Q B 160.

CORPORATION—OBSTRUCTIONS.

A corporation is not responsible for the negligence of others in leaving obstructions in the street, when it appears that the driver might have avoided the obstructions. (Mondelet, J.) —*Maguire* v. *The Corporation of Montreal*, 1 Rev. Crit. 475.

DOMINION ARBITRATION.

Held, that the Superior Court of Lower Canada has jurisdiction over an arbitrator appointed by the Government of the Dominion of Canada, under section 142 of the B. N. A. Act, while acting as such within the Province of Quebec, and may enquire whether such arbitrator is in the legal exercise of his office. —*Ouimet, Attorney-General*, v. *Gray*, 15 L. C. Jur. 306.

ELECTION LAW — DISQUALIFICATION OF CANDIDATES—LEASES BY CORPORATIONS.

Held—1. That a lease of a stall in the market with the Mayor, Aldermen and Citizens of the City of Montreal, is a contract within the meaning of the 29-30 Vic. chap 56 sec. 7.

2. That such contract, entered into by a city councillor prior to new election, is not such a continuing contract as will disqualify him, when re-elected, from sitting under the new election, nor thereby deprive him of his seat in the said Council.

3. That, under the Act, 29-30 Vic. chap. 56 sec. 7. the words used being, "Any member of the said council who shall, directly or indirectly, become a party to, or security for any contract or agreement to which the corporation of the said city is a party, or shall derive any interest, profit or advantage from such contract or agreement, *shall thereby become disqualified* and lose his seat in the said Council," the Judge cannot oust from office a member re-elected, who had contracted with the corporation while sitting as councillor under a prior election.

4. The Mayor has not, nor has the City Clerk of Montreal, power or authority to cancel leases made by the corporation, and such deeds of cancellation will be adjudged *ultra vires*.

5. Leases by corporations, and releases, should be under the seal of the corporation.—*Smith* v. *McShane* and the *Mayor et al. of Montreal*, 15 L. C. J. 203.

ELECTION LAW—CONTRACT.

Held—1. That the candidate is liable for services of carters engaged at his bidding to convey voters to the polls in a municipal election.

2. That a member of an Election Committee engaging the carters will be held responsible for their wages.

3. That such contracts can be enforced at law by suit.—*Ramage* v. *Lenoir dit Rolland*, 15 L. C. J. 219.

INSOLVENCY—PROVINCIAL LEGISLATURE.

Held, that by section 91 of the B. N. A. Act of 1867, the Parliament of Canada has exclusive legislative authority in all matters of insolvency, and an Act of the Legislature of the Province of Quebec changing the constitution of an incorporated Benefit Society, so as to force a widow to receive from the Society $200 once for all, instead of a life rent of 7s. 6d. weekly, on the ground that the Society was insolvent, is unconstitutional and null, and may be declared so by the courts having civil jurisdiction within the Province.—*Belisle* v. *L'Union St. Jacques*, 15 L. C. J. 212.

INSOLVENCY—DOWER.

The decision of Mr. Justice Torrance, recorded at p. 243 of *La Revue* was reversed in Review, Mackay, J. dissenting. Messrs. Justices Mondelet and Berthelot were of opinion that section 57 of the Insolvent Act of 1869 did not apply to dower and other *gains de survie* dependent upon the contingency or condition of survivorship to the husband, these special rights of our civil laws not being expressly mentioned in the provision of the Act. Mr. Justice Mondelet further remarked, that even if they had been so mentioned, the provision of the Act would be unconstitutional, the Parliament of Canada having no control over the civil laws of the Province. Mr. Justice Mackay was in favour of Mrs. Morrison's claim, because it was founded upon our Insolvent law, interpreted in the way in which the English Courts had interpreted a similar section in the English statute, the way in which the Courts in Ontario or New Brunswick would interpret it.—*In re Morrison and Dame Anne Simpson, claimant*, v. *Henry Thomas*, 1 Rev. Crit. 474.

INSOLVENCY—BOOK DEBTS.

The purchaser of the book debts of an insolvent estate cannot complain that some of these debts have been collected by the assignee

previously to the auction sale, although the list of debts showed no such collection whon the sale was made. (Mondelet, J.)—*Lafond* v. *Rankin*, 1 Rev. Crit. 475.

INSOLVENCY—COMPOSITION.

Held, that a composition discharge under the Insolvent Act of 1864 affects the insolvent only, and does not relieve outside parties secondarily liable, not parties to the insolvent proceedings.—*Martin* v. *Gault*, 15 L. C. J. 237.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

ALIMONY.

A wife has no action against her husband for alimentary allowance on the ground that she cannot be comfortable in the house of her husband. She must reside with him. (Mondelet, Mackay and Beaudry, JJ.)—*Conlan* v. *Clarke*, 1 Rev. Crit. 473.

BANKING.

Held, that when a bank discounts for A. a draft by him on B., and accepts a check for the proceeds and delivers it to A., for transmission to B., to enable B. therewith to retire a draft for a similar amount, drawn by A. and accepted by B. for A.'s accommodation, and about to fall due at the branch of the bank where B. resides, on the faith of A.'s representation, assurance and undertaking (without authority, however, from B.) that B. will accept the new draft, and B. receives the check, and before using it has knowledge of the transaction as between A. and the bank, B. cannot legally use the cheque to retire his own acceptance on the old draft, without accepting the new one.—*Torrance et al.* v. *Bank of B. N. America*, 15 L. C. J. 169.

BILLS AND NOTES—ALTERATION.

The word "months," which had been omitted in a note after the word "three," had been inserted by the holder without the knowledge of the endorser. *Held*, that this was not alteration, and that the endorser was liable. (Torrance, J.).—*Lainé* v. *Clarke*, 1 Rev. Crit. 475.

INSURANCE.

Introducing into the insured premises a gasoline machine of a dangerous character without the consent of the insurer, is a violation of the policy. (Mondelet, J.)—*Matthews* v. *The Northern Insurance Co.*, 1 Rev. Crit. 475.

QUIETING TITLES ACT.

The Court will not grant a certificate to quiet the title of a party who claims to be the legal owner in fee simple, but who is not in possession by a person who disputes the title of the claimant: in such a case the claimant must first recover possession of the premises. —*Re Mulholland*, 18 Chan. R. 528.

RAILWAY COMPANY—COMMON CARRIERS.

Notice of arrival of goods being given by the Company to the owners or consignees that they "remain here entirely at the owner's risk, and that this Company will not hold themselves responsible for damage by fire, the act of God, civil commotion, vermin or deterioration of quantity or quality, by storage or otherwise, but if stored, that a certain rate of storage would be charged for the storage of the goods," and which was paid to the Company by the owners.

Held, that though the liability of the Company as common carriers had ceased, by the arrival of the goods, the Company was still liable for damage as warehousemen and bailees for hire; but that in this cause the evidence did not show any negligence on the part of the railway company. Duval, C. J., Monk and Stuart, JJ. (*ad hoc*). *Contra*, Badgley and Drummond, who held that by law negligence was presumed if damage shown, and the onus of proof of care was on the Company, who had made no proof whatever to rebut the presumption against the Company. — *Grand Trunk Railway* v. *Gutman*, 1 Rev. Crit. 478.

SEDUCTION.

Plaintiff being aware that the defendant was a married man, sued him in damages for seduction. *Held*, that no action then lies. (Berthelot, J.).— *Lavoie* v. *Lavoie*, 1 Rev. Crit. 474.

TAXES—LEASE.

Under a clause in a lease the tenant had promised to pay *all the taxes on the premises, ordinary and extraordinary, foreseen and unforeseen*, during the lease. *Held*, that this clause did not comprise taxes for the widening of streets, for which compensation had been paid to the landlord. Badgley, Monk, Drummond, JJ. (Dissenting, Duval, C. J., and Caron, J.)— *Shaw* v. *Laframboise*, 1 Rev. Crit. 476.

VOID CONTRACT.

The plaintiff, on the 29th July, agreed with defendants verbally to enter their service as book-keeper on the 1st September following, for a year from that day.

Held, a contract not to be performed within a year of the making thereof, and within the Statute of Frauds, and therefore void for not being in writing.—*Dickson* v. *Jacques et al*, 31 U. C. Q. B. 141.

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

COUNTY OF GREY (SOUTH RIDING) ELECTION PETITION.

HUNTER, *Petitioner*, *v.* LAUDER, *Respondent.*

(Reported for the Canada Law Journal by C. A. BROUGH, *Barrister-at-Law.)*

Controverted Elections Acts—Adjournment—Power of judge to change place of hearing—Evidence of bribery—Responsibility for acts of agents and sub-agents—Payment of expenses of voter—Treating—Destroying election accounts.

When a rule of Court has been granted in pursuance of 34 Vic., cap. 3, sec. 14, appointing a place for the trial, not within the Division, the election for which is in question, the judge by whom the petition is being tried has no power to adjourn, for the further hearing of the cause, from the place named in the Rule of Court to a place within such division.

Where a charge of bribery is only the unaccepted offer of a bribe, the evidence must be more exact than that required to prove a bribe actually given or accepted.

The Respondent entrusted about $700 to an agent for election purposes without having supervised the expenditure. *Held:* that this did not make him *personally* a party within 34 Vict. cap. 3, sec. 46, to every illegal application of the money by the agent, or by those who received money from him. But if a very excessive sum had been so entrusted to the agent, the argument of a corrupt purpose might have been reasonable.

When a candidate puts money into the hands of his agent, and exercises no supervision over the way in which the agent is spending that money, but accredits and trusts him, and leaves him the power of spending the money although he may have given directions that none of the money should be improperly spent, there is such an agency established that the candidate is liable to the fullest extent, not only for what that agent may do, but also for what all the people whom that agent employs may do.

The payment of a voter's expenses in going to the poll is illegal, as such, even though the payment may not have been intended as a bribe.

The distribution of liquor on the polling day, with the object of promoting the election of a candidate, will make his election void.

When all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct.

Where bribery by an agent is proved, costs follow the event, even though personal charges made against the respondent have not been proved, there having been no additional expense occasioned to the respondent by such personal charges.

[Owen Sound—Sept. 12, 13, 14, and Nov. 7, 8, 1871—*Mowat, V. C.*]

The petition in this case was presented by Alexander Hunter, a voter at the election, against the return of Abraham William Lauder.

By virtue of a rule of the Court of Queen's Bench, the case came on for hearing at Owen Sound, a place not within the electoral division, in September, but owing to the absence of a material witness was adjourned until November. Upon the adjournment the question was raised whether the presiding judge could adjourn from Owen Sound to a place within the electoral division, for the further hearing of the case. But the learned Vice-Chancellor decided that he had no power to grant such an adjournment, as by so doing he would in effect override a rule of court.

It was alleged in the petition (amongst other things) that corrupt practices within the meaning of section 46 of "The Controverted Elections Act of 1871," 34 Vic. cap. 3, had been committed by and with the knowledge and consent of the respondent himself, and also by his agents.

The corrupt practices with which Mr. Lauder, the respondent, was personally charged, were direct offers of bribes and treating meetings of electors.

The offers of bribes were said to have been made to one Alexander McKechnie and one James Black, who were examined as witnesses. The evidence of both was contradicted by Mr. Lauder on his own oath. McKechnie had actively supported the respondent at the previous election for the riding, and Mr. Lauder seemed to have expected a like support from him at the election now in question. In this expectation Mr. Lauder (according to McKechnie's evidence) asked him to "come into our committee to-night," and added, "we'll furnish you with plenty of means." McKechnie did not go to the committee, and did not give Mr. Lauder his support. He deposed that he considered Mr. Lauder's observation "in the light of bribing" him.

James Black deposed that he had heard that Mr. Lauder had a large sum of money to spend on the election; that he applied to Mr. Lauder for some of it; that he offered to work, if paid; and that he (the witness) said that money would "do good" in his section; but he also deposed that Mr. Lauder would not give him any money; said it would be illegal to do so, and made him no offer. The witness added that Mr. Lauder told him to "go to Perry." He stated that he did go to Mr. Perry, and that Mr. Perry said he had no money. And it further appeared that the witness in fact got no money either from Mr. Lauder or from Mr. Perry, and that he in consequence voted for Mr. McFayden, the opposing candidate.

As to the treating, it was proved that on various occasions Mr. Lauder expressly forbade all treating, as well as everything else of an illegal kind being done to promote his election. But it appeared that on the nomination day, at a meeting held after the nomination, in the Orange Hall in the village of Durham, refreshments were brought into the room by one Woodland, and were partaken of by the persons present. Mr. Lauder deposed that he knew nothing of these refreshments before they were brought in; that he told the parties bringing them in to be careful, and that they might be "coming too near the law." He further deposed that he did not pay for these refreshments, and that no account for them had been rendered to him. There was no evidence to the contrary of what Mr. Lauder thus deposed. There was, however, evidence that he did pay for refreshments provided for various committees at their business meetings. The central committee at Durham consisted of about nine persons; the local committees did not seem to have respectively comprised so many. There was evidence, also, that on some other occasions there was a general treating of electors at the close of public meetings of electors, which Mr. Lauder had been addressing, and while he was in the house where the treating took place. There was no other evidence of knowledge or consent. One Thomas Smith swore that after a meeting held at a tavern in Egremont, which meeting had been addressed by Mr. Lauder, he had given a treat for which he paid $5; that some time after the

treat he received $20 from Mr. Lauder; that he had paid the $5 at the time the treat was given, and before he received the $20; and that the treat was given on his own responsibility, and Mr. Lauder was no party to it; that Mr. Lauder gave the $20 to pay for the use of the room in which the meeting was held, for his (Mr. Lauder's) own personal expenses at the tavern, and for refreshments which had been furnished for a committee which held a meeting at the tavern that evening. It was not shown that Mr. Lauder was aware that Smith had treated when he gave him the $20. Smith also swore that he had expended more than $20 for refreshments for committee-men, for feed for their horses, &c., in addition to the $5 paid for the treat.

The corrupt practices said to have been committed by Mr. Lauder's agents were chiefly these: 1. bribery; 2 treating meetings of electars; and 3. giving spirituous drinks during the polling day.

In regard to bribery, the principal instances proved were committed by one George Privat. Privat was the principal canvasser for Mr. Lauder in that part of the township of Normanby called the "Old Survey." Privat was called on by one William Scott and one Charles Grant, and was either asked to go on the committee (for securing Mr. Lauder's election), or was told by Scott that he had been put on the committee. The former was his own recollection, the latter was Grant's recollection of what had occurred. He sent word to Durham by these persons "that it would take $100 to work up the Old Survey." In reply, he was told that so much could not be given. He was told also to go to one Meddaugh, whom he knew. He went to Meddaugh accordingly, and at Meddaugh's instance Mr. Perry gave him $50. Privat "was not told what he was to do with the money," but he received it "to spend on the election." He went into the canvass, and in the course of it he committed the alleged acts of bribery.

The alleged bribery was this: it appeared from his own evidence that after conversing with certain named voters severally, a day or two before the election, he dropped money for them on the ground, and then walked away; that in each case he meant this money to be picked up by the voter; that his chief or only purpose in this was to secure the voters' support for Mr. Lauder; and that he dropped the money instead of handing it to the voter, because he imagined that this indirect mode would enable the voter, if sworn, to say that he had received no money Meddaugh, to whom he referred Privat as to money, was another member of the central committee. Perry, who gave Privat the money, was a distant relation of Mr. Lauder's; he was the secretary of the central committee; kept all accounts; was the treasurer for the contest, and received from Mr. Lauder, and disbursed most of the funds which Mr. Lauder from time to time supplied for the purposes of the election. Mr. Lauder stated in his evidence that he had "refused to have anything to do with committees." The only instructions which he appeared to have given with reference to the expenditure of the money were those implied in his forbidding any treating, hiring of teams, or paying for votes. Two of these voters were examined, and proved the finding of the money which Privat had dropped. Privat stated that he had some talk with the voters referred to about their doing some ploughing for him.

The Vice-Chancellor considered that if this part of his evidence were correct, the suggestion about ploughing was, like the dropping of the money, a colourable pretence by which it was proposed to evade the law.

William Scott, who solicited Privat to take part in the active work of the election, was a member of the central committee. He "went round to the different places and brought in returns, sometimes written and sometimes verbal, of how the other committees were getting on."

Mr. Perry paid out about $1700 for the purposes of the election, and after the election he claimed credit for that amount from Mr Lauder. Mr. Lauder allowed and settled $625 only, but objected to the balance as unnecessarily spent (not, he said, as illegally spent), and had not yet paid it. Perry swore that he, notwithstanding, expected to be paid, though he had not yet received any promise to that effect.

It appeared that the letters and accounts with reference to the election had been destroyed. Mr. Lauder stated that he had destroyed all the letters written to him, and had kept no copies of the letters written by him, in which reference was made to money matters; and Perry swore that he had destroyed all papers connected with the election about ten days after it took place, including a list of the members of the central committee, a record of their proceedings, and an account of moneys expended.

It is thought unnecessary to state the evidence on points involving no question of law, or no question upon which the Vice-Chancellor in giving judgment expressed an opinion.

J. K. Kerr appeared for the petitioner.

The Respondent appeared in person.

MOWAT, V. C.—I am satisfied that no case has been made out against Mr. Lauder personally.

With regard to the Orange Hall meeting, the weight of evidence goes to show that it was a meeting of committees; and besides, no refreshments for the meeting were ordered or furnished by Mr. Lauder, or paid for, or promised to be paid for, by him. I do not think that reasonable refreshments furnished *bona fide* to committees are illegal.

As to the alleged treating at Normanby, Smith's evidence is unsatisfactory, but there is no ground for believing that Mr. Lauder knew that Smith had treated when he gave him the money.

The case of McKechnie, as stated by himself, is not sufficient to prove Mr. Lauder guilty. McKechnie states that Mr. Lauder said, "come over to our committee to-night, and you shall be furnished with plenty of means," and McKechnie swears that he considered this an offer of a bribe to him. He did not go to the meeting, and no other conversation on this point took place. Now, where the charge is only the unaccepted offer of a bribe, the evidence must be more exact than is required to prove a bribe actually given or accepted. A very little difference in the language employed might make a great difference in the intention of the supposed offer. Where a conversation is not followed by the act spoken of, we are not, unnecessarily, to presume a bad intention. In an election, means are required for legitimate

purposes; and I am not at liberty to infer that Mr. Lauder meant "I shall furnish you with plenty of means for illegal purposes."

The case of Black is weaker than that of McKechnie. He says—"I heard Mr. Lauder had a large amount of money for election purposes, and I asked him for some. He refused it, and said it was illegal, and told me to go to Perry." Black applied to Perry, and Perry neither gave him money nor a promise of any. It would be preposterous to say judicially on this evidence that Mr. Lauder or Mr. Perry offered or promised to give the money which they both refused to give. Both McKechnie and Black voted against Mr. Lauder.

Next it is said that Mr. Lauder entrusted large sums to Perry: that he should have supervised the expenditure, and that his failure to do so makes him personally a party within section 46 of the Act of 1871 (34 Vic. c. 3), to every illegal application of money by Perry or by those who received money from Perry. The sum which Mr. Lauder gave was under $700; there is no evidence before me that that sum was an excessive one for legitimate expenses; and a certain amount of discretion must be placed in a candidate's agents. If he had put £7000 into Perry's hands, the argument of a corrupt purpose might have been reasonable. The facts do not suggest to my mind any idea that Mr. Lauder intended his money to be employed illegally.

For these reasons I think the personal charges not made out.

The Respondent then addressed the court as to bribery by agents.

MOWAT, V. C.—I may dispose of this case on the ground of the illegality of Privat's acts. He was asked by Scott to assist in the canvass, and was referred to Durham for money. He went there, and got the money from Perry, through the intervention of Meddaugh. These three persons were the members of, or connected with the committee at Durham. Mr. Lauder argues that it does not appear that Perry paid the money with the concurrence of the committee; but there is no evidence that Mr. Lauder had said or done anything to create a necessity for this concurrence, and there is evidence to the contrary. Perry received no instructions as to the mode of the distribution of the money. That was left to his discretion; and Mr. Lauder in his evidence distinctly repudiated all committees, and stated that he had made his payments through Perry. But even if Perry had been directed to carry out the instructions of the committee, and had disobeyed, he being the treasurer for the election, the secretary of the committee, and the confidential agent of the candidate, his acts would still bind the candidate. This is laid down in the *Staleybridge case*, 1 O'M. & H. 69. There Mr. Justice Willes said:—"I have already in the *Bewdley case* (*Ib.* 18), had occasion to decide this much. There it appeared that the sitting member had put a sum of money into the hands of his agent, and that he exercised no supervision over the way in which that agent was spending that money; that he had given him directions, and I thought really intended, that none of that money should be improperly spent; but that he had accredited and trusted his agent, and left him the power of spending the money, and I came to the conclusion upon that, that there was such an agency established as that the sitting member was responsible to the fullest extent, not only for what that agent might do, but for what all the people whom that agent employed might do: in short, making that agent, as far as that matter was concerned, himself, and being responsible for his acts. I see no reason to doubt at all that that is perfectly correct."

This is no new law: it has been the rule ever since there was a record of the law of Parliament; it is founded on reason, and if another rule were adopted, a candidate might give his agent money, take the benefit of the expenditure, and afterwards say that he did not authorize the mode in which the money had been spent, claim freedom from responsibility in respect of the use made of it, and thus evade the whole law against corrupt practices. I cannot hold otherwise in this instance (in which there is no dispute as to the the facts), than that Mr. Lauder is responsible for the acts of Privat.

As to these acts: Privat talked to certain voters about the election, and dropped the money for them, so (as he explains it) that they might be able to swear that they had received no money. To constitute the offence, it is not necessary that voters should accept an offered bribe. The two voters called confirm all that was necessary in Privat's evidence to make out the charge against him. His purpose was to secure the votes by means of this money. I have no alternative but to hold that Privat has been guilty of such acts as agent as render the election void.

So far the case is free from doubt.

As to some other points, it may be proper that, for the information of parties concerned, I should intimate the impression I have formed.

As to Ray, I do not consider the $2 given to him to have been a bribe, as distinguished from a payment for the expenses of himself and the other voters who were going with him to the polls; but the payment would be illegal either way, according to the decision of Chief Justice Richards at Picton, and of my brother Strong at Barrie.

As to the treating by agents of meetings of electors, in order to promote the election, if the validity of the election had in my view depended on that question, I would, in consequence of the decision in the *Glengarry case*, have reserved the point for the opinion of the Court of Queen's Bench.

If it had been necessary for me to decide as to the effect of distributing liquor on the polling day, I do not at present see how I could avoid holding that the object was the promotion of the election of Mr. Lauder, and that the election was void on that ground.

With regard to the destruction of the accounts and papers, I consider the matter a very grave one. If the case were stripped of all other circumstances but the destruction of the records of the committee and the accounts, by a person holding the position of Mr. Perry in the election, I incline at present to think that it would be my duty to draw the strongest possible conclusions against the respondent; and that I should make every presumption against the legality of the acts which were concealed by such conduct. The only safe course for an honest candidate to pursue, is to have all papers preserved, and to be able to show how all the money was ex-

pended. For such a candidate, or any agent of his, to be content with saying he does not know how the money is spent, is very unwise.

But I pronounce no decision on these points, as the conduct of Privat has rendered it unnecessary. On the ground of Privat's acts I declare the election void, and I shall report that it was not established to my satisfaction that corrupt acts were committed by or with the knowledge of Mr. Lauder personally.

The English practice is that costs follow the event where bribery by an agent is proved, and I follow that practice.*

The respondent then urged that there should be an apportionment of the costs, as, according to the judgment of the court, the petitioner had been successful on some only of the issues.

MOWAT, V. C, said that there did not appear to have been any increase of the costs on account of the issues on which the petitioner had failed; that his observations as to the destruction of papers were to be borne in mind, and that, under all the circumstances, he did not think there should be any apportionment.

WEST TORONTO ELECTION PETITION.

ARMSTRONG, *Petitioner*, v. CROOKS, *Respondent*.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

Controverted Elections Act—Particulars.

Where particulars of alleged corrupt practices, &c., have been delivered under an order for that purpose, better particulars will not be ordered, if those delivered substantially comply with the spirit of the order by giving all reasonable information.

Nor will better particulars be ordered, even when the order is not complied with in furnishing certain detail, provided the judge to whom the application is made thinks these details unnecessary or unreasonable, nor unless the respondent can shew on affidavit that the want of such information will prejudice him in his defence.

Semble, that the powers of the judge at the trial as to amendment of the petition, and particulars, and postponement of the trial should be liberally exercised so as to prevent a failure of justice to either party.

[Chambers, July 12, 1871.—*Richards, C.J.; Hagarty, C.J., C.P.; Morrison, J.*, and *Mowat, V.C.*, Judges on the *rota*.]

Cattanach, for the respondent, obtained a summons calling on the petitioner to show cause why he should not give better and fuller particulars of the charges contained in the petition, and directed to be given by a judge's order in that behalf.

Harrison, Q.C., shewed cause.

The particulars furnished are sufficient, and at least are the best we can give. The information must be obtained from those opposed to us, and we cannot be reasonably asked for more. The order for particulars was too strict in its terms, but we have complied with the spirit of it by giving all reasonable information.

Cattanach, contra.

The particulars furnished do not comply with the order made; and though the cause now shewn might have applied to the application for the order in the first instance, it is not an answer to the present application: *Bristol Case*, 22 L. T. Rep., N.S. 729, and a note of *Nottingham Case*, in 47 L. T. 241. [RICHARDS, C. J., and HAGARTY, C. J., C. P.—We will not hold parties rigorously to orders made, unless injustice will be done. We have not acted in the view you contend for; and if the order is too strict, can we not re-mould it now?] The order as made must be followed, and the particulars ask very explicit answers, which are not complied with. [Counsel read the order and particulars, pointing out where the latter were in his opinion defective. MOWAT, V. C. — It really makes no matter, as the evidence would be heard by the judge who may try the case. RICHARDS, C. J.—Admitting that the original order is more strict than we now think it should have been, the question is now whether you have not got all the particulars you can reasonably ask. We will carry out the spirit of the Act and rules, without regard to technicalities. HAGARTY, C. J. C. P.—Many of these orders were made before any practice was settled in this country in relation to them.] The practice in England and Ireland is in favour of our contention, See *Bradford Case*, 19 L. T. Rep. N. S. 723, 728. and the cases there referred to.

RICHARDS, C. J. — We will not defeat enquiries on any technical grounds, and we are not prepared to make any further order unless Mr. Crooks can shew by affidavit that he will be prejudiced; nor do we think he will be prejudiced. If, at the trial, the contrary is shewn, the trial can be postponed, and there can be little difficulty or expense in a city case: in a case tried in a country place, there might be some difference in this respect. If the particulars delivered are in reasonable compliance with the spirit of the order—and we think they are—we must hold that the order has been sufficiently complied with.

Summons discharged.

COURT OF COMMON PLEAS.

HOPE V. WHITE ET AL.

Distress for rent—Seizure of sheep—Liability of landlord—Trespass.

It is illegal to distrain sheep for rent when there are other goods upon the premises sufficient to satisfy the claim; and trespass was therefore held to lie against a landlord for the act of his bailiff in so distraining, it appearing that he had spoken of his making the sale, and had received the proceeds thereof, and no evidence being offered of his non-complicity therein.

[22 C. P. 5]

The declaration stated, in the first count, that plaintiff was tenant to defendant White, and defendant wrongfully distrained divers goods and chattels, viz.: 4 cows, 1 span of horses, 19 sheep, and 14 lambs, as a distress for rent, and wrongfully sold the same, whereas no rent was due.

2nd Count. That plaintiff was tenant to defendant McLean, and same as first count.

3rd Count. Setting out tenancy of White, who, without plaintiff's knowledge, assigned to McLean, and plaintiff, without notice, paid to White before distress; yet defendant distrained the property mentioned and wrongfully sold, &c., no rent being due.

4th Count. Trespass to plaintiff's goods as described in first count.

Pleas by Keller and McLean (White having allowed judgment to go by default), not guilty by stat. 11 Geo. II. ch. 19 sec. 21.

The case was tried at the last Fall Assizes, at Toronto, before Galt, J.

* See *Norwich case*, 1 O'M. and H. 11; *Bewdley case*, *Ib.* 21; *Ib.* 34; *Bridgewater case*, *Ib.* 116; *Dublin case*, *Ib.* 273; *Sligo case*, *Ib.* 302.—EDS. C. L. J.

The only point necessary to be noticed is that bearing on the defendant McLean's liability for the act of his bailiff Keller in seizing plaintiff's sheep.

The jury found that there was other sufficient distress besides the sheep.

The objection was then taken that, granting the seizure of the sheep to be illegal, McLean was not liable.

The evidence was that McLean had given a warrant to seize the goods, chattels, and growing crops. The plaintiff seized all, including the sheep, no one seeming to have any idea that any peculiar exemption attached to them. The bailiff swore McLean told him to distrain plaintiff's goods.

After taking this objection, at the close of plaintiff's case, defendant McLean was called in his own behalf. He was not asked anything on either side as to any knowledge of the kind of property seized, or of his having ratified or repudiated anything done: but he said, "when I signed the warrant, and *sold the distress*, I did not know plaintiff had paid the rent.

It was admitted he was paid his claim by Keller out of the proceeds of sale. Nothing appeared to have been left to the jury as to whether McLean assented to, or ratified, or had knowledge of the sheep being seized; nor did it seem that, although many points were urged to him by counsel, he was asked to submit any such questions.

Damages were assessed against White by default. The jury found the value of the sheep, $150

There was a verdict for defendants, McLean and Keller, and leave was reserved to plaintiff to move to enter a verdict for him against them for $150, if the Court thought him entitled to recover.

In Michaelmas Term, *K. McKenzie*, Q.C., obtained a rule to set aside the verdict for Keller and McLean, or so far as it related to the 4th count, and to enter a verdict for plaintiff on the 4th count for $150 on the leave reserved, on the ground that it was trespass to seize plaintiff's sheep for a distress, while there were other sufficient goods liable to distress on the premises, and the judge should have directed a verdict for plaintiff on the 4th count, and for a new trial on the law and evidence.

McMichael shewed cause, citing *Narget* v. *Nias*, 1 El. & El. 439; Woodf. L. & T. (last ed.) 744; *Dawson* v. *Alford*, 3 Dy. 312 *a*; *Lewis* v. *Read*, 13 M. & W. 834; *Freeman* v. *Rosher*, 13 Q B. 780.

K. McKenzie, Q C., contra, cited *Keen* v. *Priest*, 4 H. & N. 236; Add. Torts. (last ed.) 504, 533: 51 Hen. III., stat 4; *Gauntlet* v. *King*, 3 C. B. N. S. 59; *Haseler* v. *Lemoyne*, 5 C. B. N. S. 530.

HAGARTY, C. J., delivered the judgment of the Court.

There seems to be no doubt that sheep are not distrainable while there are sufficient other goods to satisfy the claim. The stat. 51 Hen. III. ch. 4 so declares, and its curious phraseology is quoted in *Keen* v. *Priest* (4 H. & N. 236.) The prohibition may, we think, be considered universal under the words, "*Nul home de religion ne auter.*"

This case was for taking sheep, the first count averring that the sheep were taken, although there was other sufficient distress. Second count, trespass. Third count, trover.

Watson, B., says, "From the earliest period of our history, it has been the law that sheep are not distrainable, if there are other goods on the premises to satisfy the debt. The seizure was therefore wholly illegal. If the plaintiff had replevied, he would have been entitled to a return of the sheep. The defendant never had any rightful possession of the sheep; therefore the case does not come within 11 Geo. II. ch. 19."

Martin, B. says, "As there were other goods, the sheep might have been rescued."

Narget v. *Nias* (1 El. & El. 439). The action was *quare clausum fregit*, assault, and carrying away the goods and chattels of plaintiff. Plea, not guilty by statute.

It appeared that there was a distress for rent, and defendant seized a spade and fork of plaintiff, being tools used by him in his trade, and the jury found there was other sufficient distress. It was objected that trespass did not lie, the tools not being in actual use. The argument was very full. Lord Campbell, in giving judgment, reviews the authorities, citing Lord Coke, that taking tools of trade, while there was other sufficient distress, was against the ancient common law of England, and adds, that as it is in itself wrongful, "it is difficult to discover any legal principle why it should not be the subject of an action of trespass, seeing that, as a general rule, wherever goods are wrongfully taken, trespass will lie." * * *Dawson* v. *Alford*, 3 Dyer 312 *a*, shews it is not necessary for plaintiff in his declaration to allege that there were other goods of sufficient value which might have been distrained, but the defendant must shew in his answer, when he justifies, that no other sufficient distress could be found."

We are bound by these authorities that the declaration here is sufficient.

It is then objected that McLean is not responsible for his bailiff's alleged acts, unless he is shewn to have authorized or sanctioned them. It was proved he received the money from the bailiff from the sale of the sheep.

Lewis v. *Read* (13 M. & W. 834) is in point. The bailiff had seized goods for the plaintiff's beyond the boundary of the farm called Penybryn, for which rent was due by another person. The defendant received the proceeds of the sale. Parke, B: "There is no doubt that the acts of defendant Read, in directing the sale of the sheep and receiving the proceeds, were a sufficient ratification of the acts of the bailiff in making the distress as to such of the sheep as were taken on the Penybryn sheepwalk, because the taking of them was within the original authority given to the bailiff by O., as the agent of Read. As to the others, not taken in Penybryn, and as to which, therefore, the authority was not followed, Read could not be liable in trover unless he ratified the acts of the bailiff, with knowledge that they took the sheep elsewhere than on Penybryn, or unless he meant to take upon himself, without enquiry, the risk of any irregularity which they might have committed, and to adopt all their acts. There appears to have been evidence quite sufficient to warrant the jury in coming to the conclusion that he did, in this sense, ratify the acts of the other defendants; but as this question was not left to the jury, the defendant is entitled to a new trial." It does not appear from the report than any objection was taken at the

trial on this point, but it says "there was no direct evidence that defendant was informed when the sheep were taken, or had any distinct knowledge that it was not made in the Penybryn sheepwalk. The point apppears in the motion in term."

In *Freeman* v. *Rosher* (13 Q. B. 780) a bailiff had improperly removed a fixture, and paid proceeds to landlord, who received it without notice of any irregularity, nor did he make enquiry. Patteson, J., giving judgment, says: "In the present case it was taken by consent, as is found by the jury, that the evidence to fix the defendant consisted solely of the warrant of distress, and of the receipt of the proceeds of the sale. The defendant had received no information of the making of the distress, neither had he interfered about the sale. The facts negative a ratification with knowledge, and there were no facts to warrant an inference that he intended anything beyond what appears. *Lewis* v. *Read* is an authority for defendant.

In *Gauntlet* v. *King* (3 C. B. N. S. 59), a bailiff had seized some books and papers of tenants on the premises, and, on action brought against him and the landlord, it being assumed the books the exempt, the same point was taken. After seizure the landlord, on tenant remonstrating, ordered bailiff to give them up, which was done. Cockburn, C. J., says: "The books and papers were undoubtedly taken by way of distress. The bailiff whose business it was to make the levy found the articles, amongst other goods of the tenant, in a cupboard, and he seized them all. It appears to me that puts an end to the question. Williams, J., expresses surprise why the things were assumed to be not distrainable. He says the evidence shewed the asportation was complete before the landlord ascertained what he had taken. * * In either view the plaintiff must succeed." Cockburn, C.J., asks, "Do you contend that a landlord, who gives a general authority to a broker to distrain, is not responsible for the act of the broker in exceeding his authority?"

We would gather from this case that the Court considered the landlord liable in any event.

In *Haseler* v. *Lemoyne* (5 C. B. N. S. 530) there was evidence of an adoption by the landlord of the bailiff's acts, but there was some discussion as to the general principle. Williams, J.: "It is quite consistent with the view we take, that the landlord is not liable for the acts of the bailiff in distraining upon premises other than the demised premises, or for seizing things not by law distrainable. But where, as here, he takes the goods which it was meant he should take, the landlord is liable for any irregularity." (The irregularities were after the seizure). Byles, J., notices the distinction "between matters done which are dehors the authority, such as taking fixtures or seizing goods in a different place from that to which the warrant addresses itself, and the case of any irregularity committed by the broker while acting within his authority."

In noticing *Freeman* v. *Rosher*, Williams, J., says, "The authority was to distrain 'goods' and the broker distrained 'fixtures.'"

The expressions of the judges in this case lean strongly towards the general liability of landlords for bailiff's acts. Cockburn, C. J., says: "Where a man authorizes another to do an act which involves certain things necessary to make it legal, he is bound to see that those things are properly done, otherwise he is responsible for the illegal acts of his agent."

At the same time there are authorities modifying and restraining the universality of his proposition. See, for instance, *Peachey* v. *Rowland* (13 C. B. 182).

In the case before us, however, we find the objection taken. Then we have the evidence of the defendant, speaking of his selling the distress. No question is asked him, and he says noting to shew his non-complicity in the acts of his bailiff, and we apparently hear no more of the objection till the argument in Term.

We think, on such evidence, we should not be warranted in sending this case again to a jury, especially after the years of costly litigation between the parties on this small claim, and that the rule to enter the verdict on the 4th count for $150, the value of the sheep, must be made absolute. Had the question been formally submitted to the jury, there can be little doubt what their verdict must have been.

We wish to pronounce no opinion as to McLean's liability, had he been fully exonerated from all sanction of Keller's acts. We are not satisfied that the point is fully concluded by authority.

Rule absolute to enter verdict for plaintiff, for $150, on 4th count.

ENGLISH REPORTS.

COMMON PLEAS.

OPPENHEIM, APPELLANT, v. WHITE LION HOTEL COMPANY (LIMITED) RESPONDENTS.

Inn, money lost by guest at—Evidence of negligence of guest—Leaving bed-room door unlocked.

Plaintiff, a guest at defendant's inn, went to bed, leaving a bag containing about £27 in his trousers' pocket. He left his trousers on the ground at the side of his bed furthest from the door. There was a key in the lock of the door, but plaintiff only shut the door, and did not lock it. Plaintiff had previously pulled the bag containing the money out of his pocket in the commercial room for the purpose of paying somebody some money. In the course of the night, somebody entered plaintiff's bedroom through the door, and stole plaintiff's bag of money:

Held, that there was evidence to go to the jury of negligence on the part of the plaintiff, which occasioned the loss in such a way that it would not have happened if plaintiff had used the care that a prudent man might reasonably be expected to have taken under the circumstances.

[25 L. T. N. S. 93.]

On appeal from the ruling of the judge of the County Court at Bristol, the following case was stated:

1. This is an action brought against the defendants, who keep a common inn for the accommodation of travellers, to recover for the loss by the plaintiff when a guest therein of £27. The case came on on the 13th December, 1870. The following are the particulars annexed to the summons:

In the County Court of Gloucestershire, holden at Bristol.

Between Samuel Oppenheim, plaintiff, v. The White Lion Hotel Co. (Limited), defendants.

The plaintiff sues the defendants for that the said defendants, being innkeepers, the said plain-

tiff, on the 31st August last, became and was the guest of the defendants for reward to be paid by the plaintiff to the defendants, and it thereupon became and was the duty of the defendants to provide the plaintiff with a safe and properly secured apartment for the reception and safe keeping of himself and his moneys and other personal belongings; yet the defendants did not provide a safe and properly secured apartment for the purpose aforesaid, and did not properly secure the personal belongings of the plaintiff, but were so negligent in the premises, and so wrongfully and negligently acted as such innkeepers as aforesaid, that the plaintiff as such guest as aforesaid became dispossessed and deprived and lost the benefit of certain property, to wit, a bag containing £22 6s., and was and is greatly damnified in and about the said premises. And the plaintiff also sues the defendants for that the defendants, on the day aforesaid, wrongfully converted to their own use and deprived the plaintiff of the possession of certain property of the plaintiff, to wit, the said bag of money. And the plaintiff also sues the defendants for that the defendants contracted and agreed with and promised to the plaintiff that, in consideration of his becoming their guest for reward as aforesaid, they would indemnify and repay, or reimburse him for any money or other property which he might lose, or of which he might otherwise be deprived whilst their guest as aforesaid. And the plaintiff thereupon became and continued a guest for reward of the defendants, but the defendants did not keep and perform their said agreement and promise, but broke the same to the injury of the plaintiff as aforesaid. And the plaintiff claims £27.

Dated the 3rd November, 1870.

2. The plaintiff is a manufacturer and general merchant, carrying on his business in London. The defendants carry on the business of common innkeepers, in Broad-street, in the city of Brist

3. The plaintiff, who occasionally travels for the purpose of his business, had for eleven years before the commencement of this action, when he happened to be in Bristol, resorted to the inn called the White Lion Hotel, kept by the defendants when the cause of action arose.

4. On the 31st August, 1870, the plaintiff came to Bristol, and went alone to the defendants' inn (the White Lion Hotel). He arrived at about eleven o'clock in the evening, was received as a traveller, and, upon his request, a bed room for the night was appropriated for his use. The plaintiff having deposited his portmanteau in the hotel, went into the commercial room, where he remained till about twelve o'clock, when he proceeded to his bedroom.

5. When the plaintiff arrived at the defendants' inn he had with him a canvas bag, containing £22 and some odd shillings in money, and a half of a £5 note, such bag with its contents being in the pocket of his trousers which he then wore.

6. When in the commercial room the plaintiff did not exhibit his money, nor mention to any one that he had any money in his possession, but about five minutes before he went to his bedroom he took out the canvas bag from his pocket, and took sixpence from it to pay for some postage stamps. He then replaced the bag in his pocket.

7. The plaintiff was shown to his bedroom by the chambermaid, who remarked to him that the window of his bedroom was open, to which he replied that he always slept with his window open.

8. The plaintiff's bedroom was on an upper storey of the defendant's premises The window opened on to a balcony into which two other rooms of the inn looked.

9. The door of the bedroom had attached to the inside of it a bolt and a lock with a key in it, both in good order and repair.

10. After the plaintiff came to his bed room he closed the door, proceeded to undress, and placed his trousers, in the pocket of which the bag containing the money then was, on a chair by the side of his bed, on that side furthest from the door, and in such a position that any one entering the room would have had to have gone round the bed to get to the chair.

11. The plaintiff then went to bed without having locked or bolted the door of the room, the door remaining shut.

12. There was no notice in the plaintiff's room requiring guests to lock or bolt the doors, nor had the plaintiff seen any such notice in any part of the defendant's inn, nor was he told by any of the defendants' servants that guests were required or advised to lock or bolt the doors. The plaintiff, in giving his evidence, stated that he was generally in the habit of locking his bed room doors when sleeping in an inn, but he had not done so on the occasion in question.

13. The plaintiff got up at seven o'clock the next morning. The door of the room was then shut.

14. The plaintiff then saw lying on the floor of his room some bits of paper and a small toy sample (which had been in the trousers' pocket in which the money was). The pocket of the trousers was turned half in and half out, and the bag with the money contained therein was not in the pocket nor to be found in the room.

15. As soon as the plaintiff discovered his loss he asked to see the manager of the hotel, but was told that he could not see him till between eight and nine o'clock. The plaintiff remained in his room till that time, when he went down stairs, saw the manager, and told him he had been robbed of his money. The manager then went up into the plaintiff's room and inspected it, and also the adjoining rooms.

16. The manager sent for two detectives, who, upon their arrival, examined the bed room in which the plaintiff slept, and the doors and windows, and the balcony on which the latter looked.

17. At the hearing of this case it was proved or admitted that the plaintiff had in his possession £27 in money and a note, contained in a bag which was in the pocket of his trousers when he retired to bed; that some person had during the night stolen such bag containing the money; that such person could not possibly have entered by means of the window of the bed room; and that the robbery could only have been effected by a person entering the plaintiff's bed room by the door.

18. It was upon these facts contended on behalf of the defendants that the plaintiff, in neglecting to lock or bolt his door, was guilty of negligence, so as to exonerate the defendants from their

liability as innkeepers, to make good the loss incurred by plaintiff.

19. No witnesses were called on behalf of the defendants.

20. The case was tried by a jury, and the judge of the County Court, in summing up the case, after referring to the facts of the case, and explaining the law as regards the liability of innkeepers for the safe custody of the property of their guests, proceeded to direct the jury that the question they would have to consider in this case was whether the loss would or would not have happened if the plaintiff had used the ordinary care that a prudent man might reasonably be expected to have taken under the circumstances In the former case they would find for the plaintiff, in the latter for the defendants.

The jury found a verdict for the defendants.

The plaintiff being dissatisfied with the question submitted to the jury by the learned judge, gave notice of appeal.

The question for the consideration of the Court is, was the judge of the County Court right in leaving the question of negligence to the jury in the form hereinbefore stated, without telling them (as the plaintiff contends) that the facts proved did not in law amount to such negligence as would exonerate the defendants from their liability as innkeepers to reimburse the plaintiff for the loss of the £27..

If the opinion of the Court should be in the affirmative, then the appeal to be dismissed with costs; if in the negative, then a verdict to be entered for the plaintiff for £27, with costs of the appeal, it being agreed that in that event each party shall pay his own costs in the court below.

Oppenheim for the appellant. The County Court judge ought not to have left the question of the plaintiff's negligence to the jury, as there was no evidence of negligence on his part. The defendants were bound to satisfy the jury that there was negligence on the part of the plaintiff, but for which the money would not have been stolen. That he failed to do He cited *Ford* v. *London and South-Western Railway Company*, 2 F. & F. 730; *Morgan* v. *Ravey*, 2 F & F. 283; *Cashill* v. *Wright*, 6 E. & B 895; *Burgess* v. *Clements*, 4 M. & S. 306; *Armistead* v. *Wilde*, 17 Q. B. 261; *Cayle's Case*, 1 Sm. L. C. 105.

Charles, for the respondents, was not called upon.

WILLES, J.—I am of opinion that this appeal must be dismissed. It appears that the appellant went to an inn of considerable size in Bristol, and went with a sum of money in his pocket, which he did not publicly exhibit, though he took no precaution to prevent its being seen. He engaged a bedroom, to the door of which there was a lock and key; but though he shut the door on going to bed, he neglected to lock it. He left the money in a place where it could be got at by a person who quietly entered the room. The money having been stolen by somebody who entered the bed room at night while the appellant was asleep, this action was brought. As a matter of law, it is insufficient to set up in answer to the action the bare fact that the appellant had a large sum of money and yet left his door unlocked. It is the duty of the innkeeper to take proper care of the property of his guests, and it is possible that he may not have taken proper care to prevent suspicious persons from entering the inn. It might be that, though the jury might think that there was some evidence of negligence on the part of the guest, their judgment on this point might be overborne by evidence of negligence on the part of the landlord, The negligence here imputed to the appellant is that though there was a key in the lock of the door, the appellant did not turn it, and the appellant's counsel has, in answer to that cited the dictum of Lord Coke in *Cayle's case* (1 Sm. L. C. 107), that in such a case "it is no excuse for the innkeeper to say that he delivered the guest the key of the chamber in which he lodged, and that he left the chamber door open." That is referred to by Erle, J., in *Cashill* v. *Wright*, 6 E. & B. 894, who asks, "Can there be such a general rule? Must not the particular circumstances be taken into consideration? Suppose an innkeeper tells his guest: 'Take care of yourself, for some pickpockets have come into the place,' and after that the guest leaves the door open." Lord Coke indeed said that the innkeeper did not get rid of his liability by giving his guest the key; but he never said that such guest, to whom a key has been given, need not, under any circumstances, use it. Supposing that, as was the case in *Burgess* v. *Clements*, 4 M. & S. 306, a stranger had once or twice looked into the room, or other circumstances had happened which ought to have excited the suspicion of the guest, can it be said that under these circumstances he is under no obligation to fasten the door? Lord Coke goes on, after using the expression cited, to give instances in which the innkeeper will be absolved. "If the guest's servant," he says, "or he who lodges with him, steals or carries away his goods, the inkeeper shall not be charged Moreover, he intimates that a guest may by his own act, take away the responsibility of the innkeeper. "The innkeeper," he says, "requires his guest that he will put his goods in such a chamber under lock and key, and then he will warrant them, otherwise not; the guest lets them lie in an outer court, where they are taken away, the innkeeper shall not be charged, for the fault is in the guest." Therefore, it is quite clear what Lord Coke meant by saying that it is no answer for the innkeeper to say that he gave his guest the key, but that the guest did not use it, was that the innkeeper was not, as matter of law, *ipso facto*, absolved by the mere delivery of the key; but he then goes on to give instances in which the innkeeper is absolved by reason of the guest having taken the responsibility upon himself.

It was urged on the jury by the counsel for the plaintiff that it was not an unreasonable thing for the plaintiff to have left his money in his pocket, and to have left the door unlocked. Some people have an objection to locking their doors. On the other hand, it was urged that if a guest at an inn did not like to lock his door, he ought to put his money away more carefully. All these things are questions of degree and of fact. I think that the County Court judge left the question quite properly to the jury. It seems to me a mistake to say that the innkeeper is responsible unless there has been gross negligence on the part of the guest, as the term "gross negligence," as was pointed out in

Cashill v. *Wright*, is apt, unless explained, to mislead the jury. It was very clearly laid down by Erle, J., in *Cashill* v. *Wright*, what negligence on the part of the guest absolves the landlord, where he says, that "the goods remain under the charge of the innkeeper and the protection of the inn, so as to make the innkeeper liable as for breach of duty, unless the negligence of the guest occasions the loss in such a way as that the loss would not have happened, if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances." I think in this case it was a question for the jury whether there was not some negligence on the part of the plaintiff, but for which the loss would not have happened. The appeal, therefore, must be dismissed with costs.

KEATING, J.—I am of the same opinion. Mr. Oppenheim contends that the County Court judge ought to have told the jury that there was no evidence to show want of ordinary care on the part of the plaintiff. If there was no such evidence, then the question whether the plaintiff had taken such care did not arise. I think, however, that the judge was bound to leave all the circumstances to the jury. Mr. Oppenheim has contended that, if we say the County Court judge was right, we shall be laying down as matter of law that a guest at an inn is, under all circumstances, bound to lock his door. But all that we do say is, that under the circumstances, the judge was right in leaving the question to the jury. The only question of law that arises is, whether there was any evidence to go to the jury. I think there was, and that the appeal must be dismissed.

M. SMITH, J.—I am of the same opinion. I think that the direction of the judge was perfectly consistent in point of law. That is not disputed by Mr. Oppenheim, and, indeed, it could not be, for the direction was precisely in accordance with the judgment of the Court in *Cashill* v. *Wright*. But what Mr. Oppenheim says is, that there was no evidence of negligence on the part of the plaintiff conducing to the loss, and that, therefore, the judge ought to have directed the jury that they could not find for the defendants on the ground of any negligence on the part of the plaintiff. I am of opinion, however, that there was evidence for the consideration of the jury, and that they were the proper tribunal to decide the question. I quite agree with Mr. Oppenheim that a man is not bound to lock his door; that is a question for himself. At the same time, I should be far from saying, that in the present state of the travelling world, a man had taken proper precautions who left his door unlocked. I do not say that his not locking his door *ipso facto* relieves the innkeeper from his liability, still the fact is a strong one, especially when there are other circumstances of negligence. All these things depend on circumstances. What may be an ordinary act at a small inn may assume a different aspect at a monster hotel. Then, again, the plaintiff had a considerable sum of money with him, and he took out the bag containing it in the commercial room. It was a question for the jury what sort of room this was, and to what kind of people the plaintiff gave an opportunity of seeing his money. The plaintiff then went to bed, leaving the money in his pocket, and though there was a key in the lock, he did not lock his door. I think the judge would have been wrong not to have left these matters to the jury, and that the appeal must be dismissed.

Judgment for the respondent.

REVIEWS.

CANADIAN ILLUSTRATED NEWS. George E. Desbarats: Montreal.

There has been for some time a marked improvement in this illustrated weekly paper. It is most creditable to its enterprising publishers, and deserves a generous encouragement from the inhabitants of the Dominion. What we especially admire is the absence of all that nasty, mawkish sensationalism that renders nearly all the American illustrated papers inadmissible to families of refinement and good taste. It is published by George E. Desbarats, 1 Place d'Armes Hill, Montreal, at the low price of $4 per annum.

APPOINTMENTS TO OFFICE.

GOVERNMENT OF ONTARIO.

THE HON. EDWARD BLAKE to be President of the Executive Council of the Province of Ontario. (Gazetted Dec. 30, 1871.)

THE HON. ADAM CROOKS to be Attorney-General for the Province of Ontario, in the place and stead of the Honorable John Sandfield Macdonald, resigned.

THE HON. ALEXANDER McKENZIE to be Secretary and Registrar of the Province of Ontario, in the place and stead of the Hon. Stephen Richards, resigned.

THE HON. ARCHIBALD McKELLAR, to be Commissioner of Agriculture and Public Works for the Province of Ontario, in the place and stead of the Hon. John Carling, resigned.

THE HON. PETER GOW to be Secretary and Registrar of the Province of Ontario, in the place and stead of the Hon. Alexander McKenzie, resigned.

THE HON. ALEXANDER McKENZIE to be Treasurer of the Province of Ontario, in the place and stead of the Hon. Edmund Burke Wood, resigned.

THE HON. RICHARD WILLIAM SCOTT to be Commissioner of Crown Lands for the Province of Ontario, in the place and stead of the Hon. Matthew Crooks Cameron, resigned.—(Gazetted Dec. 21st, 1871.)

POLICE MAGISTRATES.

JOSEPH DEACON, Esq., Barrister-at-Law, to be Police Magistrate for the Town of Brockville.

DAVID GEORGE HATTON, Esq., Barrister-at-Law, to be Police Magistrate for the Town of Peterborough. (Gazetted Nov. 25th, 1871.)

REGISTRARS.

EDWARD JOHN BARKER, of the City of Kingston, Esq., M. D., to be Registrar of the City of Kingston, in the room and place of George A. Cumming, Esq., deceased. (Gazetted Dec. 23rd, 1871.)

DEPUTY CLERK OF THE CROWN.

PETER O'REILLY, of the City of Kingston, Esq., Barrister-at-Law, to be Deputy Clerk of the Crown and Clerk of the County Court of the County of Frontenac, in the room and stead of Peter O'Reilly, Senr., Esq., deceased. (Gazetted Dec. 16th, 1871.)

NOTARIES PUBLIC FOR ONTARIO.

WALTER MATHESON, of the Town of Simcoe, Esq., Barrister-at-Law; EDWARD OSLER, of the Village of Fergus, Gentleman, Attorney-at-Law; and JOHN REID, of the Village of Edwardsburgh, Gentleman. (Gazetted Nov. 25, 1871.)